Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2007-52

Ottawa, 13 July 2007

TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors due to a labour disruption

Reference: 8660-T66-200608052

In this Decision, the Commission approves TELUS Communications Company's (TCC) request to exclude below-standard results for competitor quality of service (Q of S) indicators 1.9, 1.10, 2.7, 2.9, and 2.10 from the rate rebate plan for the months of July 2005 to February 2006 due to a labour disruption. The Commission denies TCC's request to exclude competitor Q of S indicators 1.8, 1.10A, and 1.11A during the same period of time.

The Commission determines that TCC is eligible for a refund of any rate rebate amounts that it paid to competitors for substandard competitor Q of S performance results for indicators 1.9, 1.10, 2.7, 2.9, and 2.10 for the period of time approved in this Decision.

Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 19 June 2006, in which it requested that the Commission exclude certain competitor quality of service (Q of S) indicators from the associated rate rebate plan (RRP) for competitors for the months of July 2005 to February 2006. TCC submitted that a labour disruption between 21 July and 19 November 2005 had affected the company's ability to be at or above standard for the following competitor Q of S indicators:

   - Indicator 1.8 – New Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.8)
   - Indicator 1.9 – Migrated Unbundled Type A and B Loop Order Service Intervals Met (indicator 1.9)
   - Indicator 1.10 – Local Number Portability Order (Stand-alone) Service Interval Met (indicator 1.10)
   - Indicator 1.10A – Local Number Portability Order (Stand-alone) Late Completions (indicator 1.10A)
   - Indicator 1.11 – Competitor Interconnection Trunk Order Service Interval Met (indicator 1.11)

- Indicator 1.11A – Interconnection Trunk Order Late Completions (indicator 1.11A)

- Indicator 1.13 – Unbundled Type A and B Loop Order Late Completions (indicator 1.13)

- Indicator 2.7 – Competitor Out-Of-Service Trouble Reports Cleared Within 24 hours (indicator 2.7)

- Indicator 2.7A – Competitor Out-of-Service Trouble Report Late Clearances (indicator 2.7A)

- Indicator 2.9 – Competitor Degraded Trouble Reports Cleared Within 48 hours (indicator 2.9)

- Indicator 2.10 – Mean Time To Repair – CDN[1] Services and Type C Loops (indicator 2.10)

2. Although TCC submitted that there were 11 competitor Q of S indicators with below-standard results during the period of the labour disruption, the company requested to exclude only 8 of those indicators from the rate rebate plan. TCC was of the view that it should not receive an exclusion from paying rate rebates for indicators 1.11, 1.13, and 2.7A because it was unlikely that these indicators would have been at or above standard during the period of the adverse event, had the adverse event not occurred.

3. The Commission established the final RRP in *Finalization of quality of service rate rebate plan for competitors*, Telecom Decision CRTC 2005-20, 31 March 2005 (Decision 2005-20). The final RRP, which became effective 1 July 2005, included a mechanism for considering possible exclusions from competitor Q of S results where circumstances beyond the control of an incumbent local exchange carrier (ILEC) might have caused it to fail to meet a performance standard.

4. The Commission received comments on TCC's application from MTS Allstream Inc. (MTS Allstream), Rogers Communications Inc. (RCI), and Saskatchewan Telecommunications (SaskTel). The record closed with TCC's reply comments, dated 25 August 2006.

5. The Commission considers that TCC's application raises the following issues:

   I) Does the labour disruption qualify as an adverse event?

   II) Which competitor Q of S indicators should be excluded from the RRP?

   III) For which months should the indicators be excluded?

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[1] CDN stands for "competitor digital network."

I) Does the labour disruption qualify as an adverse event?

Positions of parties

6. TCC submitted that the collective agreement with its employees had expired on 31 December 2000 and parties had tried to negotiate a new collective agreement to no avail. The company also submitted that following the 1999 merger between TELUS (Alberta) and B.C. Telecom Inc., the Canadian Industrial Relations Board (CIRB) had issued an order to create a single bargaining unit for wireless and landline employees in Alberta and British Columbia. TCC further submitted that the negotiations had been protracted and difficult, partly because they had included four merged unions representing five different bargaining units, with the Telecommunications Workers Union (TWU) as their bargaining agent.

7. TCC noted that approximately 8,200 employees, or almost half of its total workforce in Alberta and British Columbia, had taken part in the labour disruption between 21 July and 19 November 2005. It submitted that at the time of the labour disruption, the TWU ranks at TCC had spanned all of the company's front-line operations and, consequently, the labour disruption had had serious repercussions on its customer contact operations, installation and repair bureaus, and office support staff.

8. TCC argued that the labour disruption had been beyond its reasonable control. It submitted that both it and the union had engaged in good faith negotiations and had taken all steps and examined every possible avenue to avert the labour disruption. TCC argued that, in the end, the only means to bridge the chasm between the parties, and the only option available under the *Canada Labour Code*, had been via a labour disruption.

9. MTS Allstream was of the view that TCC's Q of S results should not be adjusted during the labour disruption because the labour disruption had not been an unpredictable event and the decision to escalate the conflict between TCC and the union had been within TCC's control.

10. MTS Allstream submitted that given the foreseeability of the labour disruption, the Commission should consider TCC's contingency planning and the measures it had undertaken to mitigate the impact of the labour disruption on its customers. MTS Allstream also submitted that the discrepancy between TCC's retail and competitor Q of S results during the labour disruption belied TCC's claim that its response to the labour disruption had been beyond its control.

11. RCI submitted that the issue before the Commission was not whether TCC had had control over the resolution of the labour disruption or the bargaining process, but whether TCC had had reasonable control over the consequences of the labour disruption on the Q of S it provided to competitors.

12. RCI also submitted that TCC had provided its own retail operations with better Q of S performance during the labour disruption than it had provided to RCI for equivalent services. It argued that TCC did not need to have control over the union's decision to strike or the bargaining process in order to put adequate measures in place to ensure that its Q of S for competitors did not suffer more than Q of S for retail customers. RCI was of the view that if the Commission accepted TCC's interpretation that a labour disruption was an adverse event, the ILECs would have *carte blanche* to degrade competitors' services during a labour disruption.

Commission's analysis and determinations

13. The Commission notes MTS Allstream's submission that the labour disruption was not an unpredictable event and the decision to escalate the conflict was within TCC's control.

14. The Commission also notes that, in the case at hand, TCC's labour disruption involved four merged unions representing five different bargaining units and that the amalgamation of these units resulted from a decision by the CIRB. The Commission further notes that the negotiation process was complex and lasted almost five years. In addition, the Commission notes that negotiations involved two sophisticated entities, TCC and the TWU, acting in accordance with, and exercising, their legal rights within the framework of applicable Canadian labour legislation.

15. Given that the TCC labour disruption involved complex negotiations between two sophisticated entities acting in accordance with, and exercising, their legal rights, the Commission considers that TCC did not exercise reasonable control over either the occurrence or length of the labour disruption. The Commission is of the view that an event which is partially controlled by one party and partially controlled by another is essentially beyond the reasonable control of either party.

16. The Commission considers that in order to evaluate the reasonableness of the measures put in place by TCC to mitigate the effects of the labour disruption on its customers, as MTS Allstream and RCI proposed, the Commission would need to delve into issues outside its purview and expertise. Therefore, the Commission does not consider it appropriate to analyze whether TCC's emergency measures to maintain service during the labour disruption were appropriate.

17. In the Commission's view, the labour disruption involving TCC's workforce necessarily had an adverse effect on TCC's ability to maintain normal working operations. The Commission notes that the personnel who were engaged in the labour disruption would generally have been the same personnel who performed the work associated with the competitor Q of S indicators in question. As a result, the Commission considers that the activities measured by the competitor Q of S indicators would have been directly affected by the labour disruption.

18. Given that the labour disruption was beyond TCC's control and affected the company's ability to meet competitor Q of S indicators, the Commission determines that the labour disruption between 21 July and 19 November 2005 qualifies as an adverse event.

II) Which competitor Q of S indicators should be excluded from the RRP?

Positions of parties

19. TCC proposed a methodology to exclude the effects of the adverse event from its performance on a particular Q of S indicator. The company's methodology compared performance results for each of the competitor Q of S indicators for January to May of 2005 to its performance results during the same months of 2004 to derive what each indicator result would have been during the period of the adverse event, had the adverse event not occurred.

20. TCC submitted that, based on its proposed methodology, it was likely that the results would have been at or above standard had the adverse event not occurred and, therefore, it should be granted an exclusion from paying rate rebates for below-standard results for indicators 1.8, 1.9, 1.10, 2.7, and 2.9 during the period of the adverse event.

21. TCC added that because the volume of orders was too small and variable for the company to apply its proposed methodology to indicators 1.10A and 1.11A, it should be given the benefit of the doubt and be granted an exclusion from paying rate rebates for below-standard Q of S results for these indicators during the period of the adverse event.

22. TCC noted, moreover, that its proposed methodology could not be applied to indicator 2.10 because it was a new indicator that had not been measured prior to July 2005. TCC submitted that because the repair function measured by indicator 2.10 was very similar to the repair function measured by indicator 2.7 and its results on indicator 2.7 were above standard when adjusted for the effect of the labour dispute, there was a good chance that, if adjusted, TCC's results on indicator 2.10 would also have been above standard.

23. MTS Allstream submitted that, based on TCC's historical performance on key competitor indicators, there was no reason to accept TCC's contention that it would have met the minimum competitor Q of S standards over the proposed exclusion period absent the labour disruption.

24. RCI submitted that TCC's calculation methodology was flawed and should be rejected because it had been designed to yield artificially high Q of S performance levels. RCI submitted that the methodology relied on only five months of historical data, over a period of time in which several factors could have influenced performance, and did not take into account the benefit of short-term anomalies that could have affected the ratio.

Commission's analysis and determinations

25. The Commission notes that the methodology proposed by TCC to adjust its Q of S results in its current application is the same one that the Commission rejected in *TELUS Communications Company – Application to exclude certain competition-related quality of service results from the rate rebate plan for competitors for July 2005*, Telecom Decision 2007-14, 28 February 2007 (Decision 2007-14). The Commission finds that for the same reasons stated in Decision 2007-14, the methodology proposed by TCC remains inappropriate.

26. In Decision 2007-14, the Commission set out a methodology[2] that examined performance results for the 12-month period prior to the month in which the adverse event began in order to determine whether the adverse event had affected TCC's ability to meet its competitor Q of S indicator standards.

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[2] If TCC's competitor Q of S indicator results were at or above standard for at least 6 months of the 12-month period prior to the month of the adverse event or, alternatively, if TCC's results were at or above standard for the 3 consecutive months prior to the month of the adverse event, then it would be reasonable to conclude that TCC would have met the standards for the competitor Q of S indicators had the adverse event not occurred.

27. Based on the methodology set out in Decision 2007-14, the Commission considers that, were it not for the labour disruption, under normal operating conditions,

- it is likely that the results for indicators 1.9, 1.10, 2.7, and 2.9 would have been at or above standard since the performance results in at least 6 of the 12 months prior to the labour disruption were at or above standard; and

- it is unlikely that the results for indicator 1.8 would have been at or above standard since the performance results in at least 6 of the 12 months and in at least 1 of the 3 consecutive months immediately prior to the labour disruption were below standard.

28. Accordingly, the Commission determines that during the eligible exclusion period, TCC should be granted exclusions from paying rate rebates for indicators 1.9, 1.10, 2.7, and 2.9, but should not be granted an exclusion from paying rate rebates for below-standard results for indicator 1.8.

29. The Commission examines the remaining three indicators submitted by TCC in greater detail in this section of the Decision and the period affected by the adverse event in the next section.

Indicators 1.10A and 1.11A

30. The Commission notes TCC's request to exclude indicators 1.10A and 1.11A because the volume of activity for these indicators was too small and too variable. The Commission also notes that, although the volume of activities for indicators 1.10A and 1.11A was small, TCC did not meet the standards for these indicators for at least 6 of the 12 months or for the 3 consecutive months immediately prior to July 2005. The Commission also notes that in the 12-month period preceding the adverse event, TCC's results for these two indicators were generally well below the established standard of 90 percent. More specifically, the Commission notes that, for a majority of the months where TCC did not meet indicators 1.10A and 1.11A, it missed more than half of the competitors' requests it received.

31. The Commission considers that, based on the above, it is unlikely that TCC would have met or exceeded the standards for indicators 1.10A and 1.11A during the period of the adverse event, had the adverse event not occurred.

32. Accordingly, the Commission determines that TCC should not be granted exclusions for below-standard results for indicators 1.10A and 1.11A during the eligible exclusion period.

Indicator 2.10

33. The Commission notes that indicator 2.10 was not measured prior to July 2005. In view of this, there is no basis for applying the methodology set out in Decision 2007-14. The Commission therefore considers it reasonable to apply some other methodology to test TCC's ability to provide service at or above the standard for indicator 2.10.

34. In this regard, the Commission notes that in Decision 2007-14 it considered that the performance results of indicator 2.10 would have been similar to those of indicator 2.7 under similar circumstances and, therefore, because it had allowed TCC to exclude indicator 2.7, the Commission also allowed TCC to exclude indicator 2.10.

35. Similarly, in the case at hand, the Commission considers that indicator 2.10 should be excluded during the labour disruption because TCC met or exceeded the competitor Q of S standard for indicator 2.7 in at least 6 months of the 12 months immediately prior to this adverse event.

36. Accordingly, consistent with its determination in Decision 2007-14, the Commission determines that TCC should be granted an exclusion for below-standard results for indicator 2.10 during the eligible exclusion period.

III) For which months should the indicators be excluded?

37. The Commission has determined above that TCC should be granted exclusion from the RRP for below-standard results for competitor Q of S indicators 1.9, 1.10, 2.7, 2.9, and 2.10. In this section of the Decision, the Commission will determine the period during which TCC will be excluded from paying rate rebates for below-standard competitor Q of S results.

Positions of parties

38. TCC submitted that the labour disruption had affected its operations not only for the duration of the labour disruption, but also after its settlement, while employees were returning to work and the company dealt with a backlog of repair and installation requests. The company also submitted that the effect of the labour disruption on its competitor Q of S results should be of the same duration as the longest effect on its retail Q of S results, that is, until the end of February 2006. TCC further submitted that this was a reasonable assumption because the competitor and retail Q of S indicators reflected performance by the same set of employees, carrying out the same types of functions.

Commission's analysis and determinations

39. The Commission notes that TCC requested to exclude the effects of the labour disruption on its competitor Q of S results for the same period of time that it took for the company to recover from the labour disruption in the case of its retail operations, that is, from July 2005 until the end of February 2006, which is more than three months after the labour disruption was settled.

40. The Commission considers that given the length of the labour disruption and the large number of non-management employees involved, it is reasonable to conclude that TCC would require a period of reconstruction, recovery, and re-establishment of processes in order to achieve normal working operations and to deal with any pent-up demand for repairs and new installations after the end of the labour disruption.

41. Accordingly, the Commission determines that the appropriate exclusion period for TCC to exclude below-standard competitor Q of S results is July 2005 to February 2006.

Conclusion

42. In light of the above, the Commission **approves** TCC's request to exclude below-standard results for competitor Q of S indicators 1.9, 1.10, 2.7, 2.9, and 2.10 for the period of July 2005 to February 2006, but **denies** its request to exclude below-standard results for competitor Q of S indicators 1.8, 1.10A, and 1.11A.

43. The Commission determines that, with the exception of any amounts that it has already recovered as a result of the Commission's determinations in Decision 2007-14, TCC is eligible for a refund of any rate rebate amounts that it paid to competitors for substandard performance results for competitor Q of S indicators 1.9, 1.10, 2.7, 2.9, and 2.10 for the period of time noted above.

Secretary General